

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claims 1, 62-63, 66-67 and 72 are currently being amended. Claims 61 and 65 are being cancelled without prejudice or disclaimer.

This amendment changes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 1-60, 62-64 and 66-76 are now pending in this application.

Allowable subject matter

Applicant appreciates the indication that claims 3, 7-14, 17, 20-21, 23, 25, 27-29, 31, 33-35, 37, 39, 41-43, 54, 56-59, 63-64 and 66-71 contain allowable subject matter. Claims 63, 66 and 67 have been amended to be in independent form, and are thus in *prima facie* condition for allowance. Claims 62, 64 and 68-76 depend from one of claims 63, 66 and 67, and are thus likewise in *prima facie* condition for allowance.

Claim objections

Claim 61 was objected to for being of improper dependent form based on its dependence from claim 1. This rejection is moot in view of the cancellation of claim 61. Moreover, the amendments to claims 63, 66 and 67 to be in independent form and include the features of claim 61 do not include a reference to claim 1.

Rejections under 35 U.S.C. § 101

Claims 38 and 44-48 stand rejected under 35 U.S.C. § 101 as lacking a real and tangible result. Applicant traverses this rejection for at least the following reasons.

Claims 38 and 44-48 depend from independent claim 24, either directly or indirectly, and provide a real and tangible result for at least the same reasons as independent claim 24. Independent claim 24 does provide a real and tangible result in that it provides a set of

corrected responses, where the responses are ultimately determined based on measurements with a slave instrument. Moreover, the Office Action appears to recognize that claim 24 provides a real and tangible result stating on page 3 with respect to such a result in claims 1 and 24, “As examples, claim 1 includes the step of storing and claim 24 includes the step of providing.”

Rejections under 35 U.S.C. § 103

Claims 1-2, 4-6, 15-16, 19, 22, 24, 26, 30, 32, 36, 38, 40, 44-47, 49-53, 55, 60-62, 65, and 72-76 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,459,677 to Kowalski (“Kowalski”) in view of U.S. Patent No. 4,866,644 to Shenk (“Shenk”) and U.S. Patent No. 4,168,431 to Henriksen (“Henriksen”). Claims 18 and 32 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kowalski, Shenk, and Henriksen, and further in view of U.S. Patent No. 4,893,253 to Lodder (“Lodder”). Applicant respectfully traverses these rejections for at least the following reasons.

Independent claim 1 recites “determining, based on the sets of responses, a correcting function, the correcting function being a functional relationship between a ratio of related responses of the master instrument and a sum of a plurality of terms, each term being a product of a correcting coefficient (B_i) and powers of related responses (Q_{low}^S and Q_{high}^S) of the slave instrument, wherein each response is raised to a power being a positive or negative real number, or zero, thereby determining a first set of correcting coefficients (B_0 ; B_1 ; B_2 . . .).” The references cited in the rejection of the claims fail to suggest at least this feature of claim 1.

The Office Action, on page 7, recognizes that Kowalski fails to disclose this feature, but on page 10, supplies Henriksen for disclosing this feature. Henriksen, however, fails to cure the deficiencies of Kowalski. Henriksen merely discloses calibrating a single instrument using a sample beam and a monitor beam and using different known calibration standards (See FIG. 3, col. 7, lines 16-21, 36-40). Henriksen discloses nothing regarding determining a correction function using responses of a master instrument and a slave instrument. Thus, one of ordinary skill in the art would not have been motivated to modify the Kowalski method,

which is directed to correcting a calibration model for a target instrument based on response of a reference instrument, based on Henriksen in the fashion described in the Office Action.

The Office Action states on page 16 “Kowalski, however, does disclose a master and a slave device and a relationship there between. Henriksen is not relied upon to teach this relationship, and is instead relied upon to teach forms of calculating fat content based upon X-ray data.” Applicant submits, however, that if Henriksen does not suggest how one would correct a slave device based on a master device’s responses, why would one of skill in the art transfer the teachings of Henriksen to the method of Kowalski? While Henriksen discloses how a single instrument is calibrated based on known calibration standards, Henriksen does not suggest how a correction function to correct a slave device should be obtained.

Moreover, the calibration of the single instrument in Henriksen does not involve a correction function which is a “functional relationship between a ratio of related responses of the master instrument and a sum of a plurality of terms, each term being a product of a correcting coefficient (B_i) and powers of related responses (Q_{low}^S and Q_{high}^S) of the slave instrument, wherein each response is raised to a power being a positive or negative real number, or zero.” The Office Action cites to FIG. 3 of Henriksen as allegedly disclosing this feature of claim 1. Nowhere, however, does Henriksen describe with respect to FIG. 3 any relationship between a ratio of related responses of the master instrument and a sum of a plurality of terms, each term being a product of a correcting coefficient and powers of related responses of the slave instrument. If the Examiner maintains this rejection based on Henriksen, applicants respectfully request the Examiner to point out where Henriksen discloses a ratio of related responses of the master instrument, and the terms which are a product of a correcting coefficient and powers of related responses of the slave instrument. Thus, even if Kowalski were modified to calibrate its instrument in the fashion of Henriksen, the resulting calibration would not involve the correction function as recited in claim 1. In sum, even if Henriksen were combined with Kowalski, the combination still would not meet the limitations of claim 1.

The references of Shenk and Lodder were cited for other features of the claims, but also fail to cure the deficiencies of Kowalski.

Independent claim 24 recites “determining a ratio $[Q_{\text{low}}/Q_{\text{high}}]^{\text{corr}}$ using a correcting function, the correcting function being a functional relationship between a ratio of related responses of a master instrument and a sum of a plurality of terms, each term of the plurality of terms being a product of a correcting coefficient (B_i) and powers of related responses (Q_{low}^S and Q_{high}^S) of the slave instrument, wherein each response is raised to a power being a positive or negative real number, or zero”, and is thus patentable over the applied references for reasons analogous to claim 1.

Independent claim 52 recites “a processor configured to determine, based on the sets of responses, a correcting function, the correcting function being a functional relationship between a ratio of related responses of the master instrument and a sum of a plurality of terms, each term being a product of a correcting coefficient (B_i) and powers of related responses (Q_{low}^S and Q_{high}^S) of the slave instrument wherein each response is raised to a power being a positive or negative real number, or zero, thereby determining a first set of correcting coefficients ($B_0; B_1; B_2 \dots$)”, and is thus patentable over the applied references for reasons analogous to claim 1.

The dependent claims are patentable for at least the same reasons as their respective independent claims, as well as for further patentable features recited therein.

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for

such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date November 2, 2006

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